

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

**In Re:**

**ROBERT K. HAMMOND and  
GAIL K. HAMMOND  
Debtors**

**Chapter 7**

**Case No. 12-41815-PWB**

**ROBERT K. HAMMOND and  
GAIL K. HAMMOND  
Movants**

**CONTESTED MATTER**

**v.  
COMMUNITY BANK OF PICKENS COUNTY  
Respondent**

**MOTION TO DETERMINE SECURED STATUS OF CLAIM**

COME NOW, ROBERT K. HAMMOND AND GAIL K. HAMMOND, Debtors, by and through counsel, and file this MOTION TO DETERMINE SECURED STATUS OF CLAIM, pursuant to 11 U.S.C. 506, respectfully showing the Court the following:

1.

This motion is filed pursuant to 11 U.S.C. Section 506(a) and (d), and Fed.R.Bankr.P. 302 and 9014 to treat the junior security interest and/or lien held by Respondent in Movants' residential real property, 765 Fairmount Road, Waleska, GA 30183, as a non-priority, unsecured liability for all purposes within the underlying Chapter 7 proceeding with the voiding and extinguishment of Respondent's security interest upon Movants' receiving a Chapter 7 Discharge in this case.

2.

On June 15, 2012, Movants filed for relief under Chapter 7 of the Bankruptcy Code. The

case was closed on September 19, 2012, and an Order re-opening the case was entered on November 8, 2012. Jurisdiction is appropriate pursuant to 28 U.S.C. Section 1334; LR 83.7A NDGA; and the Order of Referral entered by the United States District Court Northern District of Georgia on July 12, 1984. Venue is proper pursuant to 28 U.S.C. Section 1409. This matter is a core proceeding as define in 28 U.S.C. Section 157(b)(2)(A) and (B).

3.

This motion is brought pursuant to 11 U.S.C. Section 506 (a) and (d); Rule 3012 F.R. Bankr. P. and Rule 9014 F.R. Bankr. P.

4.

Respondent is a Georgia corporation, which may be served by first class mail to its Georgia agent for service of process, to wit:

John T. Trammell  
15 Sammy McGhee Blvd.  
Jasper, GA 30143

5.

Respondent may also be served by first class mail to its Chief Executive Officer at his address of record with the Secretary of State, to wit:

John T. Trammell, CEO  
15 Sammy McGhee Blvd.  
Jasper, GA 30143

Respondent may also be served by first class mail at its following address of record, to wit:

Community Bank of Pickens County  
15 Sammy McGhee Blvd.  
P.O. Box 40  
Jasper, GA 30143

6.

Respondent may also be served by first class mail to its Attorney of record in the instant case, to wit:

Macey, Wilensky, Kessler, and Hennings, LLC  
230 Peachtree Street, NW  
Suite 2700  
Atlanta, Georgia 30303

7.

Bank of America, N.A holds a first Mortgage Lien on the Property in the approximate amount of \$210,000.00.

8.

Respondent holds a second mortgage lien on the Property in the approximate amount of \$83,987.00. The second mortgage is more specifically identified as the deed filed in the Superior Court of Cherokee County, Georgia at Deed Book 10647, Page 440, and also filed in the Superior Court of Bartow County, Georgia at Deed Book 2367, Page 621, subordinate to the referenced First Mortgage Lien filed in the Superior Court of Cherokee County, Georgia at Deed Book 10199, Page 237 and also filed in the Superior Court of Bartow County, Georgia at 2292, Page 437.

9.

Debtors' Schedule A reflects their ownership interest in residential real property located at 765 Fairmount Road, Waleska, GA 30183. Schedule A lists the fair market value of the property at \$140,000.00. Debtors have obtained an appraisal valuing the property at \$155,000.00. The attached Exhibit "A" is a copy of the appraisal.

10.

The amount owed by the Debtors on the first mortgage exceeds the value of the subject property, leaving no equity to which Respondent's claim may attach.

11.

Movants contend that the junior position of Respondent "would not be protected from modification under section 506(d)" and should be deemed void and wholly unsecured. *In Re McNeal*, 2012 WL 1649853 (11<sup>th</sup> Cir. 2012); See also *In Folondere v. United States Small Business Admin.*, 862 F.2d 1537 (11<sup>th</sup> Cir. 1989).

WHEREFORE, the Movants pray :

- (a) That this Motion to Determine Secured Status of Claim be filed, read and considered;
- (b) that a time, date, and place be set for a hearing on the issues raised herein;
- (c) that the junior security interest of Respondent is a general, non-priority unsecured claim;
- (d) that this motion be granted and Respondent's lien be determined to be void and ordered extinguished upon Debtors receiving a Chapter 7 Discharge in this case; and
- (e) that this Honorable Court grant such other and further relief as it deems just and proper.

This 6<sup>th</sup> day of December, 2012.

/s/ William C. McCurdy, Jr.  
William C. McCurdy, Jr.  
Attorney for Debtor/Movant  
Georgia Bar No. 487416

William C. McCurdy, Jr., LLC  
12 N. Main St.  
Jasper, GA 30143  
706 253-7701  
[chuck@mccurdyllaw.com](mailto:chuck@mccurdyllaw.com)

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**NOTICE OF HEARING TO DETERMINE SECURED STATUS OF CLAIM**

PLEASE TAKE NOTICE that the Debtors in the above-referenced matter filed a MOTION TO DETERMINE SECURED STATUS OF CLAIM.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the matter on the 9<sup>th</sup> day of January, 2013 at 9:25 A.M. in Courtroom 342 of the Federal Building, 600 East First Street, Rome, GA 30161.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's office is Clerk, U.S. Bankruptcy Court, Room 339, 600 East First Street, Rome, GA 30161.

You must also mail a copy of your response to the undersigned at the address stated below.

Respectfully submitted,

/s/ William C. McCurdy, Jr.  
William C. McCurdy, Jr.  
GA Bar No. 487416  
Attorney for the Debtors

William C. McCurdy, Jr. LLC  
12 North Main Street  
Jasper GA 30143  
706-253-7701 Telephone  
706-253-7702 Fax

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I hereby certify that the foregoing MOTION TO DETERMINE SECURED STATUS OF CLAIM and NOTICE OF HEARING TO DETERMINE SECURED STATUS OF CLAIM were duly served by certified mail and first class mail to each of the following persons/entities on the 6<sup>th</sup> day of December, 2012, properly addressed as follows:

Tracey L. Montz  
Chapter 7 Trustee  
Suite 108-#406  
2146 Roswell Road  
Marietta, GA 30062-3813

First Class Mail

John T. Trammell  
15 Sammy McGhee Blvd.  
Jasper, GA 30143

Certified Mail  
First Class Mail

John T. Trammell, CEO  
15 Sammy McGhee Blvd.  
Jasper, GA 30143

Certified Mail  
First Class Mail

Community Bank of Pickens County  
15 Sammy McGhee Blvd.  
P.O. Box 40  
Jasper, GA 30143

Certified Mail  
First Class Mail

Macey, Wilensky, Kessler, and  
Hennings, LLC  
230 Peachtree Street, NW  
Suite 2700  
Atlanta, Georgia 30303

Certified Mail  
First Class Mail

Robert and Gail Hammond  
P.O. Box 1047  
Holly Springs, GA 30142

First Class Mail

This 6th day of December, 2012.

/s/ William C. McCurdy, Jr.  
William C. McCurdy, Jr., LLC  
12 N. Main St.  
Jasper, GA 30143  
706 253-7701  
chuck@mccurdylaw.com